

Remarks

The office action indicated a problem with the word “population” and pointed out that the word “plurality” had been used for that concept. Accordingly the words have been changed in the claims. Counsel sees this as being no change in substance.

The office action had a problem with “electronic memory tag.” This rejection is respectfully traversed, since no confusion has been noted in any of the **nine prior office actions** or **five prior examiner’s answers** in this application. It is noted that in support of the rejection, the examiner has cited references with dates (2006 and 2010) years after applicant’s filing date, and those apparently improperly affected her judgment in the most recent office action. The rejection seems to require that applicant have disclosed those later-invented things in order to satisfy this new standard. That is not the law. This rejection should be withdrawn.

The office action continues to have problems with the notion that members of the plurality of vessels may move. Edison’s electric light burned out eventually, so its filament was no longer electrically conductive; by the examiner’s thinking, he should not have been granted a patent on the light bulb with a conductive filament. As applicant said on page 27 in the most recent appeal brief:

The Examiner concedes that the vessels are a manufacture, but apparently claiming them as being in different facilities and taking into account their movement between the facilities causes confusion in the Examiner’s mind and makes their status as manufactures suspect. Even if the claims are construed to cover a situation that may exist only momentarily, it will exist. A series of specimen collection vessels starting at the vessel distribution facility and working their way to the specimen collection facility and laboratory facility will, at least temporarily, be in the positions claimed. The fact that the claims cover a situation that may not be permanent as to a particular set of vessels does not make them indefinite. See *In re Hruby*, 373 F.2d 997, 153 USPQ 61 (CCPA 1967) holding that the pattern of water made in a water fountain is a manufacture, despite the fact that the water is in movement and does not statically remain as depicted.

The Examiner wonders about the changing status of the vessels, but that is not proper. Even a short-lived state of affairs – like the pattern of a water fountain, suffices. Other, indisputable articles of manufacture, (let’s say an iPhone 4), has a finite life (let’s say 10 years to be conservative) from the perspective of a 13.7 billion year old universe, ten years is quite transient. We hypothesize that if that life of ten years shrinks to ten milliseconds, the iPhone would not cease to be an article of manufacture.

The office action rejects the claims under section 112 paragraph 2 because the examiner has a problem with the recital of the “electronic memory tag.” A quick re-reading of the specification at page 10, line 26 to page 11, line 13 together with an examination of Figures 1-3 should clear this up:

“The present invention provides a diagnostic or toxicology specimen container having a wireless electronic memory tag for non-contact storage and retrieval of information. As seen in FIG. 1, a vessel 1 is provided with a cap 2 for sealingly receiving a biomedical specimen within the vessel 1. An electronic memory tag 3 is affixed to an exterior surface of the vessel 1. An enlarged front view of a preferred embodiment of the electronic memory tag 3 is shown in FIG. 2. The electronic memory tag 3 includes a carrier label 4 which has a front face 5 and a rear face 6. Preferably, the front face 5 is imprinted with an identification bar code 7. A text area 8 is also provided for printing, typing, or writing pertinent information on the front face 5 of the carrier label 4. A detail view of the rear face 6 of the carrier label 4 is shown in FIG.3. An electronic memory device 9 is attached to the rear face 6. Alternatively, the invention may include a separate electronic memory tag 3 and a second printed label having a bar code 7 imprinted thereon (not shown). The apparatus of Figures 1-3 may be used for either a diagnostic or toxicology specimen. For toxicology specimens, the specimen containers may further include a tamper-resistant or tamper-evident locking or sealing device (not shown).”

The tag 3 includes a label 4 that has the device 9 on its back. Thus, the tag is mounted directly on the vessel.

The office action adds new rejections based upon the disclosure of US Patent 7,070,053 to Abrams, which issued July 4, 2006, and claims the benefit of provisional application 60/229,917, filed September 5, 2000. Enclosed are declarations of the inventors (one by the assignee on behalf of a missing inventor, as allowed by MPEP § 715.04 I(D)) and counsel, demonstrating that the invention was conceived before September 5, 2000 and that applicants were diligent about achieving a constructive reduction to practice upon application filing on December 14, 2000. Thus the Abrams patent is not prior art and the rejections based upon that reference are improper and should be withdrawn. All of the prior art rejections, thus, have been overcome.

The application is now in condition for allowance.

Respectfully submitted,



Howard A. MacCord, Jr.
Registration No. 28,639
MacCord Mason PLLC
P. O. Box 2974
Greensboro, NC 27402
(336) 273-4422

Date: 18 July 2011
File No.: 2552-011